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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 KIMBERLY A. QUERRY, an individual,  
11 Plaintiff,  
12 v.  
13 OFFICER SMALE, an individual; MIKE  
14 BROWN, an individual; DOES 1-20, inclusive,  
15 Defendants.

Civil No. 09-cv-0215-WQH (POR)

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION TO COMPEL**

**[Document No. 34]**

16 On January 13, 2010, Plaintiff filed a Motion to Compel production of training materials on  
17 handcuffing techniques that were in effect at the time of Plaintiff's arrest and Defendant Officer  
18 Kevin Smale's personnel and disciplinary records. (Doc. 34.) Pursuant to the Court's January 6,  
19 2010 order (Doc. 32), on January 14, 2010, Defendants lodged portions of Defendant Smale's  
20 personnel file and the CHP's Officer Safety Manual relating to misdemeanor and felony arrest  
21 techniques with the Court for an *in camera* review.

22 Federal Rule of Civil Procedure 26(c) provides that a court may limit discovery to protect  
23 from annoyance, embarrassment, oppression, or undue burden or expense. Federal common law  
24 recognizes a qualified privilege for official information. Kerr v. United States Dist. Ct. for N.D.  
25 Cal., 511 F.2d 192, 198 (9th Cir.1975), aff'd, 426 U.S. 394 (1976). Government personnel files are  
26 considered official information. See, e.g., Zaustinsky v. University of Cal., 96 F.R.D. 622, 625  
27 (N.D. Cal. 1983), aff'd, 782 F.2d 1055 (9th Cir. 1985). To determine whether the information  
28 sought should be disclosed, the court must weigh whether confidentiality outweighs the requesting

1 party's need for the information. Hampton v. City of San Diego, 147 F.R.D. 227, 231 (S.D. Cal.  
 2 1993); See also Kelly v. City of San Jose, 114 F.R.D. 653, 657-58 (N.D. Cal. 1987.)

3 Upon reviewing the parties' moving papers and conducting an *in camera* review of the  
 4 documents at issue, the Court hereby GRANTS in part and DENIES in part Plaintiff's Motion to  
 5 Compel production of documents. (Doc. 34.) Specifically:

6 1. Document AGO 1: Personnel File-Personnel Transfer Checklist: The transfer  
 7 document is solely administrative. The document has limited relevancy, and any relevant part may  
 8 be obtained through other sources. Thus, this document shall not be produced.

9 2. Document AGO 2-5: Personnel File-Service Record: The document contains purely  
 10 personnel information. The document has limited relevancy, and any relevant part may be obtained  
 11 through other sources. Thus, this document shall not be produced.

12 3. Document AGO 6-67: Personnel File-Performance Appraisal/Officer Evaluation  
 13 Activity Summary: Most documents contain self-critical and critical analysis that has little, if any,  
 14 relevancy to the issues in this case. Defendants' interest in keeping such personnel matters  
 15 confidential outweighs Plaintiff's need for the information. However, AGO 46 covers the relevant  
 16 time period in this case. Accordingly:

17 a. AGO 6-45 and AGO 47-67 shall not be produced.

18 b. AGO 46 shall be produced within **fifteen days** of this order. AGO 46 shall be  
 19 for attorneys eyes only and shall be covered by an agreed upon protective  
 20 order.

21 4. Document AGO 68-95: Personnel File-Cadet Evaluation Summary: The document  
 22 has no relevancy. Thus, this document shall not be produced.

23 5. Document AGO 96-99: Personnel File-Memorandum of Direction: The document  
 24 has no relevancy. Thus, this document shall not be produced.

25 6. Document AGO 100: Personnel File-Individual Accident, Injury and Safety  
 26 Recognition Record: The document has no relevancy. Thus, this document shall not be produced.

27 7. Document AGO 101: Personnel File-Injury and Illness Prevention Program  
 28 Orientation & Review: The document has no relevancy. Thus, this document shall not be produced.

1           8.     Document AGO 102: Personnel File-Receipt of Inconsistent & Incompatible  
2 Activities Statement: The document has no relevancy. Thus, this document shall not be produced.

3           9.     Document AGO 103: Personnel File-Sensitive Position Designation Receipt: The  
4 document has no relevancy. Thus, this document shall not be produced.

5           10.    Document AGO 104: Personnel File-Training Guides & Manuals Issued to Cadets:  
6 The document is relevant and Plaintiff's need for the information outweighs Defendants' interest in  
7 keeping such personnel matters confidential. Thus, AGO 104 shall be produced within **fifteen days**  
8 of this order.

9           11.    Document AGO 105-177: Unsanitized Version of CHP Officer Safety Manual  
10 Chapter 21, HPM 70.6 (Misdemeanor and Felony Handcuffing Techniques:

11               a.     AGO 105: Defendants shall produce AGO 105 as redacted within **fifteen**  
12 **days** of this order.

13               b.     AGO 106: Defendants shall produce AGO 106 within **fifteen days** of this  
14 order.

15               c.     AGO 107-124: Defendants shall produce AGO 107-124 within **fifteen days**  
16 of this order. AGO 107-124 shall be for attorneys eyes only and shall be  
17 covered by an agreed upon protective order.

18               d.     AGO 125-162: The Court denies Plaintiff's motion to compel production of  
19 AGO 125-162 without prejudice. Without further information concerning the  
20 facts of the arrest and handcuffing, the documents concerning felony arrests  
21 shall not be produced. Defendants' interest in keeping such matters  
22 confidential outweighs Plaintiff's need for the information.


23               e.     AGO 163-176: Defendants shall produce AGO 163-176 within **fifteen days**  
24 of this order. AGO 163-176 shall be for attorneys eyes only and shall be  
25 covered by an agreed upon protective order.

26               f.     AGO 177-194: Defendants' interest in keeping such matters confidential  
27 outweighs Plaintiff's need for the information. Thus, this document shall not  
28 be produced.

1           12.     The parties shall submit a an agreed upon protective order within **five days** of this  
2 order. The parties shall contact the Court if any issues arise with regard to the protective order.

3           **IT IS SO ORDERED.**

4 DATED: January 26, 2010

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6 LOUISA S PORTER  
7 United States Magistrate Judge

8 cc:           The Honorable William Q. Hayes  
9 all parties  
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